

LEGISLATIVE RESEARCH COMMISSION

INVESTMENT OF PUBLIC FUNDS



REPORT TO THE
1983 GENERAL ASSEMBLY
OF NORTH CAROLINA

LEGISLATIVE RESEARCH COMMISSION

INVESTMENT OF PUBLIC FUNDS



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STATE OF NORTH CAROLINA
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH 27611



January 12, 1983

TO THE MEMBERS OF THE 1983 GENERAL ASSEMBLY:

The Legislative Research Commission herewith reports to the 1983 General Assembly on the matter of investment of public funds. The report is made pursuant to Resolution 61 of the 1981 General Assembly.

This report was prepared by the Legislative Research Commission's Committee on Investment of Public Funds and is transmitted by the Legislative Research Commission for your consideration.

Respectfully submitted,

Liston B. Ramsey
Liston B. Ramsey

W. Craig Lawing
W. Craig Lawing

Cochairmen
Legislative Research Commission

1981-83

LEGISLATIVE RESEARCH COMMISSION MEMBERSHIP

House Speaker Liston B. Ramsey
Cochairman
Representative Chris S. Barker, Jr.
Representative John T. Church
Representative Gordon H. Greenwood
Representative John J. Hunt
Representative Lura S. Tally

Senate President Pro Tempore
W. Craig Lawing, Cochairman
Senator Henson P. Barnes
Senator Carolyn Mathis
Senator William D. Mills
Senator Russell Walker
Senator Robert W. Wynne

P R E F A C E

PREFACE

The Legislative Research Commission, authorized by Article 6B of Chapter 120 of the General Statutes, is a general purpose study group. The Commission comprises two Cochairmen, the Speaker of the House and the President Pro Tempore of the Senate, and ten additional members, five appointed from each House of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

At the direction of the 1981 General Assembly, the Legislative Research Commission has undertaken studies of various subjects. Resolution 61 of the 1981 Session Laws, which incorporated House Joint Resolution 1375, authorized the Legislative Research Commission to study State investment and maximum earning productivity of all public funds, under the direction of Representative John J. Hunt. The Cochairmen of the study committee established by the Research Commission are Representative R. D. Beard and Senator Russell Walker. The full membership of the Committee is listed in Appendix A of this report. The resolutions which authorize the study and determine its scope are attached as Appendix B.

C O M M I T T E E P R O C E E D I N G S

COMMITTEE PROCEEDINGS

The Legislative Research Commission's Committee to Study the Investment of Public Funds held four meetings. The Committee considered a range of methods by which a greater return might be made on the investment of public funds, including: 1) more frequent remission of sales and use and alcoholic beverage taxes to the State; 2) reimbursement to the State by some licensing and regulatory boards for administrative costs; 3) simpler methods of money transfers between agencies; 4) improvement of investments by the State Treasury; and 6) use of the State Treasurer as a depository of funds held by the ABC Boards and Clerks of Court. Due to the complex nature of these issues, the Committee had time to investigate in depth only the matter of funds held by clerks of court. Further study will be needed to deal with other investments of public funds.

For a list of those persons who made presentations to the Committee, see Appendix C. Details of the meetings are contained in the Committee minutes, which are on file in the Legislative Library.

F I N D I N G S A N D R E C O M M E N D A T I O N S

FINDINGS AND RECOMMENDATIONS

The Committee found that Clerks of Court maintain an aggregate balance of approximately twenty million (\$20,000,000.00) dollars in checking accounts in commercial banking institutions. These banks, because of the relatively stable balance of the funds and the "float" created by the check clearing process, have free use of these monies and are able to invest the majority of the funds for their own account.

If these funds were deposited in accounts with the State Treasurer rather than in checking accounts with private banks, an additional sum of approximately 2.4 million (\$2,400,000.00) dollars could be earned for the General Fund of North Carolina. With the funds on deposit under the fiscal control of the Treasurer, that office could invest excess funds exactly as banks are currently doing, with income accruing to the State rather than increasing the profits of commercial banking institutions.

The Committee further found that, based on the opinion of the Attorney General (See Appendix D), it is not unconstitutional for the Treasurer to provide banking services to clerks. Furthermore, the Treasurer may put into the General Fund any money he earns from investing funds held in clerks' checking accounts.

The Committee therefore recommends that checking accounts of clerks at commercial banks be replaced with accounts in the name of the State Treasurer to be held by him in the name of the clerk. Through a warrant system, the accounts will function exactly as regular checking accounts, with no change in the operation of clerks' offices. Clerks'

funds will be, as they are now, "deposited" by them and not "invested." Clerks will continue to write checks on the account when necessary and will receive a monthly bank statement and canceled checks from the Treasurer's Office. Only funds in checking accounts will be affected, and those funds will be exempted if law otherwise directs. A copy of the recommended legislation is attached as Appendix E.

The Committee also recommends that this study be continued in order to investigate other ways to improve investment of public funds.

A P P E N D I C E S

Appendix A

LEGISLATIVE RESEARCH COMMISSION
COMMITTEE TO STUDY INVESTMENT OF PUBLIC FUNDS
1981-1983

Representative R. D. Beard
Cochairman
Box 53555
Fayetteville, North Carolina 28305
O: 919-484-4131

Representative E. Graham Bell
318 South Street
Gastonia, North Carolina 28052
O: 704-867-5391

Representative James B. Black
114 Barclays, American Building
Charlotte, North Carolina 28286
O: 704-377-5936

Representative Martin Lancaster
Post Office Drawer 916
Goldsboro, North Carolina 27530
O: 919-735-7275

Senator Russell Walker
Cochairman
Post Office Box 1831
Asheboro, North Carolina 27203
O: 919-625-6177

Senator Charles W. Hipps
Suite 305, 505 North Main Street
Waynesville, North Carolina 28786
O: 704-452-2866

Senator Cecil R. Jenkins, Jr.
Post Office Box 65
Kannapolis, North Carolina 28081
O: 704-933-2180

Mr. Roger Williamson
North Carolina National Bank
Post Office Drawer 968
Fayetteville, North Carolina 28302
O: 919-864-2020

LRC Member responsible for Study:

Representative John J. Hunt
Box 277
Lattimore, North Carolina 28089

Staff: Genie Rogers, Legislative Services Office, General Research Division
Shirley Capps, Committee Clerk

Appendix B
Resolutions—1981

H. R. 1292

RESOLUTION 61

**A JOINT RESOLUTION AUTHORIZING STUDIES BY THE
LEGISLATIVE RESEARCH COMMISSION.**

Be it resolved by the House of Representatives, the Senate concurring:

Section 1. The Legislative Research Commission may study the topics listed below. Listed with each topic is the 1981 bill or resolution that originally proposed the study and the name of the sponsor. The Commission may consider the original bill or resolution in determining the nature, scope and aspects of the study. The topics are:

- (1) Continuation of study of revenue laws (H.J.R. 15 — Lilley).
- (2) Continuation of study on problems of aging (H.J.R. 48 — Messer/S.J.R. 37 — Gray).
- (3) Day care (H.J.R. 223 — Brennan).
- (4) Civil rights compliance of non-State institutions receiving State funds (H.J.R. 344 — Spaulding).
- (5) Social services and public assistance (H.B. 393 — P. Hunt).
- (6) The need for new health occupational licensing boards (H.B. 477 — Lancaster/S.B. 285 — Jenkins).
- (7) Matters related to public education, including:
 - a. The feasibility of making the 12th grade optional in the public schools (H.J.R. 890 — Tally).
 - b. Continue study of public school food service (H.J.R. 948 — Brennan).
 - c. The teacher tenure law (S.J.R. 621 — Royall).
 - d. Providing teachers with duty-free periods (S.J.R. 697 — Speed).
 - e. Continuation of study regarding purchase of buses in lieu of contract transportation, and other school bus transportation matters (no 1981 resolution).
- (8) Campaign financing and reporting (H.J.R. 975 — D. Clark).
- (9) State's interests in railroad companies and railroad operations (H.B. 1069 — J. Hunt).
- (10) Matters related to insurance, including:
 - a. Insurance regulation (H.B. 1071 as amended — Seymour), including the feasibility of establishing within the Department of Insurance a risk and rate equity board.
 - b. How the State should cover risks of liability for personal injury and property damage (H.J.R. 1198 — Seymour).
 - c. Credit insurance (H.J.R. 1328 — Barnes).
- (11) Matters related to public property, including:
 - a. Development of a policy on State office building construction (H.J.R. 1090 — Nye).
 - b. The potential uses and benefits of arbitration to resolve disputes under State construction and procurement contracts (H.J.R. 1292 — Adams).
 - c. The bonding requirements on small contractors bidding on governmental projects (H.J.R. 1301 — Nye).
 - d. Continue study of the design, construction and inspection of public facilities (S.J.R. 143 — Clarke).
 - e. Whether the leasing of State land should be by competitive bidding (S.J.R. 178 — Swain).
- (12) Allocation formula for State funding of public library systems (H.J.R. 1166 — Burnley).

(OVER)

- (13) Economic, social and legal problems and needs of women (H.R. 1238 — Adams).
- (14) Beverage container regulation (H.J.R. 1298 — Diamont).
- (15) Scientific and technical training equipment needs in institutions of higher education (H.J.R. 1314 — Fulcher).
- (16) Role of the State with respect to migrant farmworkers (H.J.R. 1315 — Fulcher).
- (17) Existing State and local programs for the inspection of milk and milk products (H.J.R. 1353 — James).
- (18) Laws authorizing towing, removing or storage of motor vehicles (H.J.R. 1360 — Lancaster).
- (19) Annexation laws (S.J.R. 4 — Lawing).
- (20) Laws concerning obscenity (House Committee Substitute for S.B. 295).
- (21) The feasibility of consolidating the State computer systems (S.J.R. 349 — Alford/H.J.R. 524 — Plyler).
- (22) Laws pertaining to the taxation of alcoholic beverages and the designation of revenues for alcoholism education, rehabilitation and research (S.J.R. 497 — Gray).
- (23) Regional offices operated by State agencies (S.J.R. 519 — Noble).
- (24) Continue study of laws of evidence (S.J.R. 698 — Barnes).
- (25) Continue study of ownership of land in North Carolina by aliens and alien corporations (S.J.R. 714 — White).
- (26) Rules and regulations pertaining to the Coastal Area Management Act (S.J.R. 724 — Daniels).
- (27) Transfer of Forestry and Soil and Water from Department of Natural Resources and Community Development to Department of Agriculture (H.B. 1237 — Taylor).
- (28) Continue sports arena study (H.J.R. 1334 — Barbee).
- (29) State investment and maximum earning productivity of all public funds (H.J.R. 1375 — Beard).

Sec. 2. For each of the topics the Legislative Research Commission decides to study, the Commission may report its findings, together with any recommended legislation, to the 1982 Session of the General Assembly or to the 1983 General Assembly, or the Commission may make an interim report to the 1982 Session and a final report to the 1983 General Assembly.

Sec. 3. The Legislative Research Commission or any study committee thereof, in the discharge of its study of insurance regulation under Section 1(10)a. of this act, may secure information and data under the provisions of G.S. 120-19. The powers contained in the provisions of G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Commission or any study committee thereof in the discharge of said study. The Commission or any study committee thereof, while in the discharge of said study, is authorized to hold executive sessions in accordance with G.S. 143-318.11(b) as though it were a committee of the General Assembly.

Sec. 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified, this the 10th day of July, 1981.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1981

HOUSE JOINT RESOLUTION 1375

Sponsors: Representative Beard.

Referred to: Appropriations.

July 7, 1981

1 A JOINT RESOLUTION AUTHORIZING THE LEGISLATIVE RESEARCH
2 COMMISSION TO STUDY STATE INVESTMENT AND MAXIMUM EARNING
3 PRODUCTIVITY OF ALL PUBLIC FUNDS.

4 Be it resolved by the House of Representatives, the Senate
5 concurring:

6 Section 1. The Legislative Research Commission is
7 authorized to make a study of State investment and maximum
8 earning productivity of all public funds.

9 The Legislative Research Commission may report its
10 findings, including any proposed legislation, to the 1981 General
11 Assembly, Fall Session, or to the 1981 General Assembly, 1982
12 Session. If it has not reported its findings to the 1981 General
13 Assembly, Fall Session, or to the 1981 General Assembly, 1982
14 Session, it shall report its findings to the 1983 General
15 Assembly.

16 Sec. 2. This resolution is effective upon ratification.

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Appendix C

PERSONS APPEARING BEFORE THE COMMITTEE

<u>NAME</u>	<u>GROUP REPRESENTATED OR SUBJECT OF PRESENTATION</u>
Mr. Everitt Barbee Clerk of Court Onslow County Jacksonville, North Carolina 28540	Funds held by Clerks of Court
The Honorable Harlan E. Boyles State Treasurer Albemarle Building 325 North Salisbury Street Raleigh, North Carolina 27611	Current investment policies and funds held by Clerks of Court
Mr. James Leo Carr Clerk of Court Durham County Durham, North Carolina 27701	Funds held by Clerks of Court
Mr. Franklin E. Freeman, Jr. Director, Administrative Office of the Courts Justice Building Raleigh, North Carolina 27611	Funds held by Clerks of Court
Mr. Tommy Griffin Clerk of Court Cumberland County Fayetteville, North Carolina 28302	Funds held by Clerks of Court Clerks of Court Association
Mr. Hawk Johnson Vice President North Carolina National Bank Post Office Box 27287 Raleigh, North Carolina 27611	Funds held by Clerks of Court
Mr. Douglas A. Johnston Attorney General's Office Justice Building Raleigh, North Carolina 27611	Attorney General's Office
Mr. Charles Knox 1490 City National Center 200 South Tryon Street Charlotte, North Carolina 28202	NC Association of ABC Boards
Mr. W. E. Leloudis 1610 Woodland Avenue Burlington, North Carolina 27215	Funds held by ABC

The Honorable Edward Renfrow
State Auditor
Legislative Office Building
300 North Salisbury Street
Raleigh, North Carolina 27611

Funds held by Clerks of Court

Ms. Louise Wilson, President
North Carolina Clerks' Association
Graham, North Carolina 27253

Association of Clerks of Court



State of North Carolina

Department of Justice

P. O. Box 629

RALEIGH

27602

S. L. EDMISTEN
ATTORNEY GENERAL

April 14, 1982

MEMORANDUM

TO: Genie Rogers
FROM: Douglas A. Johnston
RE: Clerk's Funds

Conclusions:

If the Clerk deposits funds in an account which pays interest, whether with a bank or the State Treasurer, he must account for the interest to the beneficial owner.

If the Clerk deposits money in a checking account, whether with a bank or the State Treasurer, no interest, payable to the Clerk or to the beneficial owner, is earned absent special provisions of the checking account. If the Clerk has not contracted to earn interest, and does not earn interest, he need not account for interest.

Catagories of Funds in the Clerk's Hands:

(1) Trust and Fiduciary Funds

- (a) Where a statute, judgment or order requires that funds be invested or that interest be earned, the Clerk must pay any interest earnings to the beneficial owners. He cannot put the money in a simple checking account.
- (b) Where the statute authorizes the Clerk to earn interest on funds held by his office and the Clerk chooses to do so by depositing the monies in an interest bearing account, then the Clerk must pay any interest earnings to the beneficial owners.

(2) Monies to be Disbursed to Public Agencies

Monies to be disbursed to public agencies (such as monies to be disbursed for the law enforcement retirement system, facility fees, jail fees or officer fees) are not required by statute to be invested. Therefore, they may be deposited in a simple checking account.

(3) Monies to be Disbursed to Individuals

Where the statute or judgment or order is silent on interest earned on monies received by the Clerk, pursuant to a statute, judgment or order, then the Clerk may deposit the money in a simple checking account.

In categories #2 and #3, where simple checking accounts are permissible, these accounts may be with either local banks or with the Treasurer, as the General Assembly may provide.

Further, interest (the so-called "float") earned by the bank or the Treasurer, while holding the funds in the checking account, do not have to be paid to the party to whom the monies are to be disbursed.

The General Assembly may require that any monies be held in interest bearing accounts only.

The Constitution prohibits certain funds from leaving the county. Article 9, §7 of the Constitution of North Carolina.

DAJ:rcl

SESSION 19 83

INTRODUCED BY:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT ESTABLISHING DEPOSITORY ACCOUNTS WITH THE STATE TREASURER FOR CLERKS
3 OF COURT.
4 The General Assembly of North Carolina enacts:
5 Section 1. Article 12 of Chapter 7A of the General Statutes is
6 amended by adding a new section to read:
7 "7A-113. Deposit of certain funds received by clerk to account of State
8 Treasurer. -- (a) Unless otherwise provided by Art. 9, §7 of the North Carolina
9 Constitution, G.S. 7A-112(b), a judgment or a court order, the clerk of superior
10 court shall deposit all monies received by him, except monies he invests, in a
11 bank selected by the clerk and approved by the State Treasurer. The money shall
12 be deposited to the account of the State Treasurer, to be held by the Treasurer
13 in the name of the clerk. The clerk may at any time withdraw money for
14 investment pursuant to G.S. 7A-112(a) or for disbursement through a warrant
15 system designed by the State Treasurer.

Sec. 2. This act shall become effective July 1, 1983.

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